

REMARKS

Claims 1-52 are all the claims pending in the application.

I. Claim Rejections: 35 USC §102

The Office rejected claims 1-6, 19, 21-28, 30-42, and 46-52 under 35 USC §102(e) as allegedly being unpatentable over Dhara et al. (US 2004/0005042) (hereinafter “Dhara”). The Applicant respectfully traverses the rejection for the reasons set forth below.

General Comments on Dhara

The Applicant points out generally that Dhara, taken as a whole, does not teach the claimed invention. Dhara is directed to an interactive call notification system to inform a *called party, or destination device*, of information on a calling party, and to protect the called party from unwanted calls. In contrast, the Applicant’s claimed invention is directed to an automatic messaging client launcher system that provides information to the calling party, or originating device, and is designed to automatically launch a messaging client *of an originating device calling a destination device*. Therefore, overall, Dhara cannot be said to teach the elements of the claimed invention, as Dhara does not provide information or aid to a calling party or originating device, but rather to a called party, or destination device. The comments below further emphasize the differences with Dhara.

Claim 1

The Applicant submits that Dhara fails to teach an automatic messaging client launcher system with a messaging initiator for launching said messaging client. Specifically, the Office cites to paragraph 0023 and Fig. 2 of Dhara, stating “called party dialog instance 132 may send an instant message to calling party cellular telephony device 102 to indicate the called party’s busy status....” What Dhara still fails to disclose, however, is a messaging initiator that launches *a messaging client of an originating device*, as set forth in claim 1. Dhara does not disclose the ability of the called party dialog instance 132 to launch a messaging client of the calling party cellular telephony device 102, whereby the calling party would be able to send a message to the unavailable called party. Dhara instead discloses only the ability to send information from the called party dialog instance 132 to the calling party simply to indicate that the called party is busy or unavailable. As the claims are viewed in light of the specification, the Applicant refers the Office to paragraph 0034 of the specification, which states that “if the destination device does not connect, messaging initiator 120 launches the originating device’s messaging client 130, so that *the user may conveniently send a message to the unavailable device.*” (emphasis added). The specification explains how the user of the originating device would then have the ability to create a message to send to the unavailable destination device. Dhara, taken as a whole, does not teach the ability of launching a messaging client so that a calling party could send a message to the called party. Therefore, Dhara cannot be said to teach each and every element of claim 1, as

Dhara does not teach a messaging initiator for launching said messaging client when said destination device is unavailable.

Claim 2

With regard to claim 2, the Applicant submits that the Office has failed to make a prima facie case of anticipation under 35 USC §102(e), as the Office only cites to Dhara for disclosing one of the six communication devices listed in claim 2. The Office fails to submit arguments that Dhara discloses the use of a mobile communication device, cellular telephone, internet protocol telephone, smart telephone and a satellite telephone. Furthermore, the Applicant submits that claim 2 is allowable at least based on its dependency to claim 1 for the reasons stated above. Therefore, the Applicant requests that the Office withdraw the rejection of claim 2.

Claim 3

The Applicant also submits that Dhara fails to disclose a messaging initiator that is operable to provide destination device addressing information to said messaging client, as set forth in claim 3, as Dhara does not disclose a messaging client that is launched upon detection of an unavailable destination device. As Dhara does not even provide for launching a messaging client, Dhara cannot be said to provide addressing information to the messaging client. Furthermore, the Office argues that Dhara discloses sending “instructions” from a calling party telephony device to a called party device, and that destination device addressing information is inherent in these instructions if the instructions are to be delivered correctly. However, the “instructions” of Dhara are not the same as the message in the claimed invention, as the

instructions of Dhara correspond to information on the disposition of the called party device or the calling party device, rather than a message to be sent from the calling party to the called party, as set forth in the claimed invention.

For at least these reasons, Dhara does not disclose the features of claim 3. Furthermore, the Applicant submits that claim 3 is allowable at least based on its dependency to claim 1.

Claim 4

The Applicant submits that claim 4 is not disclosed by Dhara, as Dhara does not disclose inputting a message to a messaging client. Instead, Dhara discloses sending an instant message to the calling party to indicate the status of the called party. However, Dhara does not disclose that the message is inputted to a messaging client so that the calling party can create and send a message back to the unavailable called party, as is set forth in claim 4. Further, Dhara fails to disclose the features of a messaging initiator to launch a messaging client, as the called party dialog instance of Dhara only sends status information to the calling party device, but does not operate to launch a messaging client or input a message to the messaging client, as set forth in claim 4.

For at least these reasons, and at least based on its dependency to claim 3, the Applicant submits that claim 4 is allowable over the Dhara.

Claim 5

The Applicant also submits that claim 5 is not disclosed by Dhara, as Dhara lacks a messaging initiator, and therefore further lacks the ability of a messaging initiator to format a message so that the reply is addressed to the destination device. The Applicant refers the Office to the arguments set forth above regarding claim 1, as Dhara does not disclose a messaging initiator configured to launch a messaging client. Furthermore, the cited section of Dhara—Figure 3, elements 326 and 328—do not discuss the transmission of a message from the calling party to a called party, only the transmission of information, such as the status of the called party.

For at least the reasons stated above, and further in view of claim 5's dependency on claim 4, the Applicant submits that claim 5 is allowable in view of Dhara.

Claim 6

Dhara cannot be said to disclose a messaging initiator operable to provide destination device addressing information in a reply field of a message, as set forth of claim 6, as Dhara does not provide for a messaging initiator to launch a messaging client and create a message. The Office cites to Dhara as setting up a “two-way communications path to the calling party,” but this two-way communications path cannot be equated to a messaging initiator to launch a messaging client, nor does it provide for placing destination device addressing information in a reply field of a message, as is specifically set forth in claim 6.

The Applicant further submits that claim 6 is allowable at least based on its dependency to claim 5.

Claim 19

With regard to claim 19, the Applicant refers the Office to the arguments presented above with regard to claim 1, and submits that claim 19 is allowable at least based on its dependency to claim 1.

Claim 21

Regarding the rejection of claim 21, the Applicant refers the Office to the arguments presented above with regard to claim 1, in that Dhara fails to disclose a messaging client that is launched in response to an unavailable destination device. Additionally, the Applicant submits that claim 21 is allowable at least based on its dependency to claim 1.

Claims 22-28, 30-42, 44, and 46-52

The Office rejected claims 22-28, 30-42, 44 and 46-52 for similar reasons as those stated for the above mentioned claims. Correspondingly, the Applicant submits that these claims are allowable for similar reasons as those presented above. Generally, Dhara does not disclose an automatic messaging client launcher with a messaging initiator that launches a messaging client on an originating device when a destination device is unavailable. For at least the reasons submitted herein and in the above discussion of the 35 USC §102 rejections, the Applicant submits that claims 22-28, 30-42, 44, and 46-52 are allowable over Dhara.

II. Claim Rejections: 35 USC §103

The Office rejected claims 7-18 and 20 under 35 USC 103(a) as allegedly being unpatentable over Dhara.

Claim 7

Regarding claim 7, the Office states that Dhara discloses the invention substantively but does not specifically disclose that the messaging client comprises an integrated component of said launcher. However, the Office states that it has been held obvious to make things integral, citing *In re Larson*, 144 USPQ 347 (CCPA 1965). The Office then concludes that it would be obvious to combine a component of the launcher with the messaging client, thereby providing an integrated program which improves communications and reliability.

The Applicant disagrees, and asserts that the rule of *In re Larson* is being improperly applied as a per se rule without considering the particular problems associated with combining the messaging client and the automated messaging client launcher. The requirements to combine a messaging client with the automatic messaging client launcher require specific knowledge of the type of network used, the type of device used, as well as the protocols and compatibilities of the messaging client and the automated messaging client launcher. Therefore, the Applicant submits that it cannot be said that it is obvious to make things integral per se, and a further showing by the Office as to why it would be obvious to combine the messaging client and the messaging client launcher be demonstrated if the rejection of claim 7 is to be maintained.

The Applicant submits that claim 7 is patentable over Dhara, as Dhara does not teach, suggest or provide any motivation to integrate a messaging client with an automated messaging client launcher. Furthermore, the Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claims 1 and 3, from which claim 7 depends. The Applicant also believes that claim 7 is allowable at least based on its dependence on claims 1 and 3.

Claim 8

The Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claims 1 and 3, from which claim 8 ultimately depends. The Applicant also believes that claim 8 is allowable at least based on its dependence on claims 1 and 3.

Claim 9

The Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claims 1 and 3, from which claim 9 depends. The Applicant also believes that claim 9 is allowable at least based on its dependence on claims 1 and 3.

Claim 10

With regard to claim 10, the Applicant respectfully disagrees with the Office's statement that it is inherent that the destination device addressing information is provided in a destination field. In many messaging applications in the art, the address field must be manually filled in by

the sender of a message. In the particular feature of claim 10, the messaging client is operable to provide this destination device addressing information in the destination field of a message, without requiring the user to lookup or manually add in the address field. Dhara does not disclose the subject matter of claim 10, as Dhara does not disclose the use of a user-created message created by a calling party originating device and sent to a called party destination device.

For at least the reasons above, and further in view of the dependency of claim 10 on allowable claims 1 and 3, the Applicant submits that Dhara does not teach the features of claim 10.

Claim 11

The Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claims 1 and 3, from which claim 11 ultimately depends. The Applicant believes that claim 11 is allowable at least based on its dependence on claims 1 and 3, and further for the reason that Dhara fails to disclose the messaging client of the claimed invention.

Claim 12

The Applicant submits that Dhara does not teach the features of claim 12, and that the Office has failed to make a prima facie case of obviousness under 35 USC §103(a), as the arguments set forth by the Office against claim 12 fail to address the additional group of message

types listed in claim 12, including short messages, enhanced messages, and multimedia messages. Furthermore, the Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claims 1 and 3, from which claim 12 ultimately depends. The Applicant believes that claim 12 is allowable at least based on its dependence on claims 1 and 3.

Claim 13

The Applicant submits that Dhara does not teach the features of claim 13, and that the Office has failed to make a prima facie case of obviousness under 35 USC §103(a), as the arguments set forth by the Office against claim 13 fail to address the additional group of message content types listed in claim 13, including audio, video, still image, multimedia and voice. Furthermore, the Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claims 1 and 3, from which claim 13 ultimately depends. The Applicant believes that claim 13 is allowable at least based on its dependence on claims 1 and 3.

Claim 14

The Applicant submits that Dhara fails to teach the features of claim 14, as Dhara does not teach the use of a default message. The Office cites to Figure 2, ref. 218 and paragraphs 33-34 of Dhara for the use of a default “script” used when a called party is busy, which tells the system how to dispose of a call. This “script” is not a message but rather a set of instructions for how to handle a particular situation, such as when a call arrives to a called party while the called party is on the phone. As discussed in paragraph 0020 of Dhara, “such scripts are

preprogrammable; prepopulated by the user *to perform certain functions* based upon the calling telephone number and the state of the called party telephone device 116.” (emphasis added). A default message, such as the one described in claim 14, cannot perform any function, but is merely sent by the automatic client launcher system when selected by a calling party. Therefore, Dhara cannot be said to teach the use of default message content, as Dhara fails to disclose the use of a default message in general.

For at least these reasons, and further in view of the dependency of claim 14 upon claim 8 and ultimately claims 1 and 3, the Applicant submits that claim 14 is allowable over Dhara.

Claim 15

With regard to claim 15, the Applicant refers the Office to the arguments presented immediately above with regard to claim 14, and submits that as Dhara fails to disclose the use of a default message, Dhara further cannot teach where the messaging client is operable to send the default message to the destination device automatically. The Applicant further points out that the cited section in Dhara, when a called party is busy and sends instructions without user intervention, is the opposite of the claimed invention, where a default message is sent from the originating device, or calling party, to the destination device, or called party.

For at least these reasons, and further in view of the dependency of claim 15 upon claim 14 and ultimately claims 1 and 3, the Applicant submits that claim 14 is allowable over Dhara.

Claim 16

The Office rejected claim 16 by stating that although Dhara doesn't specifically disclose where a default message can be specified by a user of the originating communication device, the concept of allowing a user to select a default message is well known and expected in the art. Therefore, the Office concludes that it would have been obvious to one of ordinary skill in the art to modify Dhara to allow the user to select a default message.

The Applicant respectfully disagrees, and submits that as Dhara fails to disclose the use of a default message, as discussed above with regard to claims 14 and 15, Dhara cannot further teach where a default message can be specified by a user of the originating communication device. Dhara provides no teaching, suggestion, or motivation to use a default message and then further customize that message for each user.

Therefore, the Applicant submits that claim 16 is patentable over Dhara, for at least the reasons stated above, and further in view of its ultimate dependency on claim 1.

Claim 17

With regard to claim 17, the Applicant submits that Dhara does not teach where the client launcher is activated and deactivated by the originating communication device. The Office extrapolates from Figure 2 of Dhara for support of this assertion by arguing that the client launcher only works when the originating communication device is used to place a call to a destination device, and that therefore the system is event-driven and activated by the originating

communication device. The Applicant respectfully disagrees, and submits that Dhara in fact indicates that devices present in the network, such as a called party dialog and calling party dialog, are responsible for actions the Office has previously equated with the automated messaging client launcher system of the claimed invention. Therefore, it cannot be said that the originating communication device must activate the messaging client launcher, nor can it be said that Dhara teaches this feature. If anything, Dhara teaches away from the activation and deactivation of the automated messaging client launcher by the originating communication device, which the Applicant submits as strong evidence that claim 17 cannot be considered obvious in view of Dhara.

Claims 18 and 20

The Applicant refers the Office to the arguments presented in Section I., above, with regard to the allowability of claim 1, from which claims 18 and 20 depend. The Applicant also believes that claims 18 and 20 are allowable at least based on their dependence on claim 1.

Claims 29, 43 and 45

The Office rejected claims 29, 43, and 45 for similar reasons as those stated for the above mentioned claims. Correspondingly, the Applicant submits that these claims are allowable for similar reasons as those presented above. For at least the reasons submitted herein and in the above discussion of the 35 USC §103 rejections, the Applicant submits that claims 29, 43 and 45 are allowable over Dhara.

AMENDMENT UNDER 37 C.F.R. § 1.111
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III. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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